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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Express Signs International--Request for Reconsideration

File: B-225738.2

Date: July 28, 1987

DIGEST

1. Decision is affirmed on reconsideration where it is not shown to be legally or factually wrong.

2. Where agency amends specifications to satisfy protester's concerns, protest that specifications are defective is academic.

DECISION

Express Signs International requests reconsideration of our decision Express Signs International, B-225738, June 2, 1987, 87-1 C.P.D. ¶ ___, in which we denied the firm's protest concerning Veterans Administration (VA) invitation for bids (IFB) No. 615-2-87.

We affirm our decision.

The solicitation was issued on January 15, 1987, for bids to provide and install all interior signs at the replacement VA Medical Center in Minneapolis, Minnesota. The IFB, as amended, required firms to furnish bid bonds with their bids and the successful bidder to furnish a performance bond within 10 days after receiving a notice to proceed. Express protested that the bonding requirements were improper under Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.103 (1986); that the VA did not allow sufficient time for offerors to obtain bonds; and that the IFB specifications were defective.

The cited regulation provides that while agencies generally should not require performance bonds for other than construction contracts, bonds may be needed to protect the government's interest. The regulation goes on to give four examples of situations in which bonds might be appropriate. We found that the VA's decision to require bonds, based on the fact that the timeframe for performance of the contract was critical to opening the Medical Center and the fact that

the contractor would be performing on government property, was reasonable. We further found that since the bid opening had been delayed for several months, Express had time to resolve its problem in obtaining bonds, and we noted that, in any event, the mechanics of securing bonds is to be resolved by the prospective bidder and the surety, not by our Office. We did not address Express' concerns about the adequacy of the specifications because the VA agreed with the protester and amended the specifications.

In its request for reconsideration, Express first complains that we failed to consider the firm's argument that the contract in issue does not fall within any of the four examples recognized by the FAR where bonding requirements are proper in nonconstruction contracts. As indicated above, however, we did address this point. The fact is that the four examples are illustrative only, and do not limit the nonconstruction situations in which bonding requirements are appropriate. Moreover, we noted that the first example in the FAR recognizes that bonds may be appropriate where government property will be provided to the contractor, and that the contractor under the protested solicitation will perform on government property.

Express next argues that our decision failed to consider whether the firm was required to obtain its bonds from a surety company licensed by the state of Minnesota, which Express understood was required by Minnesota law. As we stated in our initial decision, however, the mechanics of securing properly required bonds is not a matter for our consideration. In any event, in its request for reconsideration Express asserts that the VA informed the firm that a bidder was not required to comply with Minnesota law. Since the bond must be acceptable to the VA, and the VA apparently is willing to accept a bond from other than a Minnesota surety, we fail to understand Express' continuing concern.

Finally, Express complains that we did not consider its protest concerning the adequacy of the specifications. Express concedes that in response to its protest the VA agreed with the firm and amended the specifications in a manner satisfactory to the company, but asserts that we should have considered the issue anyway. Once the VA decided to amend the specifications, however, the issue became academic, and there was no controversy for our Office to consider. See Areawide Services, Inc., B-225253, Feb. 9, 1987, 87-1 C.P.D. ¶ 138.

Since Express has not shown that our decision is legally incorrect nor provided information that we have not previously considered, we affirm the decision. 4 C.F.R. § 21.12 (1986).

Harry R. Van Cleve
General Counsel